SUPERIOR COURT
of the
State of Delaware

William L. Witham, Jr.
Resident Judge

Kent County Courthouse
38 The Green
Dover, Delaware 19901
Telephone (302) 739-5332

Trial Held: May 8, 2006
Decided: August 21, 2006

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Re: ***Robin M. Loureiro, et al. v. Leroy and Phyllis Copeland***
Civil Action No. 04C-12-014
Letter Opinion and Order After Non-Jury Trial

Dear Counsel:

This is a civil action brought by Robin Loureiro, Beth Saliga, Robert Loureiro and Christine Wiebenga ("Plaintiffs") for breach of contract between the father of the Plaintiffs, John T. Loureiro, and Leroy Copeland, Sr. and Phyllis J. Copeland ("Defendants"). The Plaintiffs are the biological children of John Loureiro who died on July 13, 2002. Plaintiffs claim that Defendants owe $25,565.00, together with pre and post-judgment interest at the legal rate and court costs. Defendant Leroy Copeland filed a *pro se* answer essentially denying the allegations. Counsel for Defendants entered his appearance on March 28, 2005 and Defendants admit to entering into a contract to purchase six racing horses on or about September 12, 1999. Defendants acknowledge their signatures on two separate written instruments and received sums of $15,900.00 on December 10, 1999 and $15,000.00 on January 8, 2000 for two additional horses. These

instruments were not signed by John Loureiro. The controversy concerns whether the Defendants owe any further money to the children of John Loureiro or whether the debt has been paid.

I. The Legal Standard

As a trier of fact, the Court must determine whether an enforceable contract existed and, if so, was it breached. In order to recover damages for breach of a binding contract, the Plaintiffs must first establish a manifestation of mutual assent or a meeting of the minds on all essential terms.[1] A contract which is vague or indefinite in its terms will not be legally binding on the parties.[2] The material terms of a contract are vague or indefinite if they cannot provide a reasonable standard for determining whether a breach has occurred.[3]

The Plaintiff bears the burden of proving its breach of contract by a preponderance of the evidence. In this regard, the Court must be mindful that if the evidence presented by the parties during trial is inconsistent, and the opposing weight of the evidence is evenly balance, then "the party seeking to present a preponderance of evidence has failed to meet its burden".[4]

II. Parties' Contentions

Both parties agree that John Loureiro and Leroy Copeland were involved in horse racing and enjoyed a business relationship with each other for over thirty years. Prior to John Loureiro's death, the parties owned a number of horses together pursuant to oral and written arrangements. It is agreed that on September 12, 1999, a written agreement was entered into for the purchase of six horses by the Defendants for an agreed sum of $29,000.00. This agreement provided that until the purchase price was paid, 40% of the

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[1] 17 A. Am. Jur. 2nd Contracts § 26 (1991).

[2] *Biasotto v. Spreen*, 1997 WL 527956 (Del. Super.), at *4.

[3] *Id*. at *4.

[4] *Eskridge v. Voshell*, 1991 WL 78471 (Del.), at *3.

total earnings of the horses would be paid to John Loureiro.[5] The agreement also provides terms and conditions for how and when payments would be made as well as the possible addition of future horses subject to this agreement. The agreement further provides that if John Loureiro dies, the balance would be paid to his family.

Subsequently, on December 10, 1999 and on January 8, 2000, separate proposals were submitted by the Defendants to John Loureiro acknowledging that horses named "Copper Cadet" and "D.J. Cadet" were purchased by John Loureiro for $15,900.00 and $15,000.00 respectively with the Defendants training and racing the horses. Monies earned by the horses were to be split 50/50. John Loureiro did not sign these agreements. Plaintiffs contend that these two additional arrangements are contracts. It is undisputed that the Defendants possessed these horses, raced them and otherwise acted in accordance with the agreement. Thus, an offer and acceptance clearly occurred.[6]

Plaintiffs further contend that the original balance owed under these three contracts was $59,900.00. The final balance due, believed to be acknowledged by the Defendants as $32,000.00, represented payments having been previously made toward the original balance.

Defendants contend that the only agreement was the September 12, 1999 contract for the purchase of six horses and that Defendant Leroy Copeland paid off this debt in 2000. The Defendants provided sixty-one Customer Receipts (Def. Ex. 3) or postal money orders from June 17, 1999 to December 11, 2000, as evidence satisfying this debt. The total of these receipts is $29,011.00. Defendants contend that while they considered purchasing Copper Cadet and D.J. Cadet, they never reached a satisfactory agreement. Defendants claim that it was the usual course of dealing with Mr. Loureiro to offer a signed draft of an agreement and then Mr. Loureiro would sign the draft to consummate the deal. (See Pl. Ex. 6 & 7).

III. Discussion

[5] Plaintiffs agreed at trial that they were not seeking payment or any percentage of the horses' earnings.

[6] These two agreements also had provisions allowing John Loureiro's immediate family to receive future earnings and the horses or value thereof.

The Defendants acknowledge the business relationship with the decedent, John Loureiro, and the contract of September 12, 1999. It is clear and the record supports a finding that Defendant Leroy Copeland admitted that a balance was due even beyond giving credit for the sixty-one postal money orders. Although the latter two agreements dated December 10, 1999 and January 8, 2000 are unsigned by John Loureiro, Defendants had the horses, raised them and acted upon the agreements. Defendant Leroy Copeland discussed their racing history in colorful terms, such as "got claimed" for D.J. Cadet and "won himself out" for Copper Cadet. He had possession and clearly he did not own them; John Loureiro did. The arrangement can be viewed like a lease purchase agreement. "Whether or not an enforceable agreement was formed in this case is a legal determination that, in turn, rests on a fact issue involving witness credibility."[7] "The fact that the contract is not signed by the party seeking enforcement does not render it immature or deprive it of the requisite mutuality of enforcement if signed by the defendant."[8]

Further, in weighing the credibility of the witnesses, I find that the Defendant Leroy Copeland had conversations with Plaintiffs Beth Saliga and Robin Loureiro where arrangements were authorized to deposit payments from Defendants into a bank account and those payments were paid. This is further evidence of an acknowledgment of the contracts and a debt owed therefrom. The earnings sheets (Pl. Ex. 11-13) prepared by the Defendants also show a balance owed. It is especially notable that Plaintiffs' Ex. 11 shows a balance of $30,599.40 which is remarkably close to the net sum of $30,889.00 when one subtracts the sixty-one postal money orders in the amount of $29,011.00 (Def. Ex. 3) from the gross balance of $59,900.00.

Plaintiffs have shown by a preponderance of the evidence that an enforceable contract existed whereby the gross sum was due in the amount of $59,900.00. The Court, in evaluating the credibility of the parties and witnesses, by a preponderance of the evidence, finds that the Defendant Leroy Copeland admitted the debt due of $32,000.00. Plaintiffs' Exhibit 9 indicates that the debt due is $32,000.00 which was

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[7] *Morton v. Evans*, 1998 WL 276228 (Del. Ch.), at *2.

[8] *Ehrenstrom v. Phillips*, 77 A. 81 (Del. Ch. 1910), at 85 (citing Pomeroy on Equity Jurisprudence § 1405).

later confirmed by Defendant Leroy Copeland in conversations with Plaintiff Robin Loureiro.

Defendants have not met their burden to show that the sixty-one payments (Def. Ex. 3) are all to be credited to the debt due and not to the earnings due, or a portion thereof. A substantial number of these unidentified payments predate the September 12, 1999 contract and may very well be payments made under different contractual agreements between the parties.

IV. Conclusion

Accordingly, judgment is entered in favor of Plaintiffs and against Defendants jointly and severally in the amount of $25,565.00 with interest at the legal rate from October 16, 2002 and post-judgment interest from the date of this Order.

IT IS SO ORDERED.

/s/ William L. Witham, Jr.
Honorable William L. Witham, Jr.

WLW/dmh
oc: Prothonotary
xc: Order Distribution